

1 SCOTT M. VOELZ (*pro hac vice*)  
svoelz@omm.com  
2 LUPE R. LAGUNA (*pro hac vice*)  
llaguna@omm.com  
3 O'MELVENY & MYERS LLP  
400 South Hope Street  
4 Los Angeles, CA 90071-2899  
Telephone: (213) 430-6000  
5 Facsimile: (213) 430-6407

6 RANDALL W. EDWARDS (*pro hac vice*)  
redwards@omm.com  
7 E. CLAY MARQUEZ (*pro hac vice*)  
cmarquez@omm.com  
8 O'MELVENY & MYERS LLP  
Two Embarcadero Center, 28th Floor  
9 San Francisco, CA 94111-3823  
Telephone: (415) 984-8700  
10 Facsimile: (415) 984-8701

11 Attorneys for Defendant  
XPO LOGISTICS, INC.,  
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14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF ILLINOIS**

16  
17 VINCENT LEUNG, on behalf of himself and all  
others similarly situated,

18 Plaintiff,

19 v.

20 XPO LOGISTICS, INC.,

21 Defendant.  
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Case No. CV 15-cv-03877

**DEFENDANT XPO LOGISTICS, INC.'S  
RESPONSE TO MERIDITH HALSEY'S  
OBJECTIONS TO CLASS  
SETTLEMENT**

1 On October 19, 2017, the Court issued an Order preliminarily approving the parties  
2 proposed class Settlement Agreement, finding that the Agreement appeared “fair, reasonable, and  
3 adequate, and within the possible range of approval.” Preliminary Approval Order ¶ 4, ECF No.  
4 142. Nothing in the lone objector’s limited objection should cause the Court to deny final  
5 approval of the class settlement and to make whatever attorney’s fees award the Court deems  
6 appropriate.

7 Objector Meridith Halsey generally objects to class counsel’s potential fee award, the  
8 selection of the National Consumer Law Center (“NCLC”) as the *cy pres* recipient, and the  
9 structure of the Agreement’s *cy pres* provision. See Halsey Objection, ECF No. 148. XPO takes  
10 no position on Halsey’s objections to class counsel’s potential fee award. XPO believes the  
11 NCLC is an appropriate *cy pres* beneficiary in this case, given the nature of the claims being  
12 settled, although XPO is open to any alternatives the Court may have in this regard if the Court  
13 were to find NCLC somehow unacceptable. However, regardless of the ultimate *cy pres*  
14 beneficiary chosen, XPO disagrees with Halsey’s argument that the Agreement “should be  
15 rejected in its entirety for artificially limiting class relief in favor of a [*cy pres* recipient].”  
16 Objection 14. That objection is misguided because the *cy pres* relief is a last resort and does not  
17 harm class members.

18 Nothing about the structure of the Agreement’s *cy pres* provision undermines its fairness  
19 or the adequacy of its terms. Given the tens of thousands of claimants, and the structure of the  
20 settlement itself, it is unlikely that any meaningful funds will be provided to the *cy pres*  
21 beneficiary, making Halsey’s concerns relating to the Agreement’s *cy pres* provision ring hollow.  
22 See *In re Mexico Money Transfer Litig. (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1032 (N.D.  
23 Ill. 2000) (rejecting objection to *cy pres* provision because “[g]iven the size of the class,  
24 distribution of the total *cy pres* distribution to individuals would not significantly enhance the  
25 value of the settlement for any class member.”). According to the latest figures from the class  
26 administrator, over 42,700 class members to date have responded to the significant notice efforts  
27 in this case and have filed a potentially valid claim, amounting to a claims rate of approximately  
28 13.74 percent. See Second Decl. of Andrew Perry ¶ 20. Given the high number of apparently

1 valid claims, *cy pres* relief will be used only in the event that claimants fail to cash their checks.  
2 Accordingly, claimant payouts will constitute the overwhelming majority of the settlement  
3 disbursements. Any funds the *cy pres* recipient receives from claimants' uncashed checks will be  
4 *de minimis* in value. Indeed, given that each verified claimant made the effort to submit a claim,  
5 and provided an updated address and contact information as part of that process, it is extremely  
6 unlikely that any significant number will fail to cash a check worth over \$100 when they receive  
7 it. In anticipation of such a high claim rate, Halsey "conditionally objected" to the settlement's *cy*  
8 *pres* provision and noted there is only a risk that significant portions of the settlement fund would  
9 be diverted away from class members if fewer than "about 9,000 claims are received." Objection  
10 14. Thus, because the current claim data shows there are far more than 9,000 valid claims,  
11 Halsey's fears have simply not materialized. Stated differently, this is not a case where the Court  
12 should reject a settlement, negotiated at arms-length, "for artificially limiting class relief in favor  
13 of a non-party" as Halsey's Objection suggests. *Id.*

14 The structure of the Agreement's Second Distribution provision further belies Halsey's  
15 concerns, as it ensures that the majority of the disbursement funds will go to claimants, as  
16 opposed to a *cy pres* beneficiary. Under the terms of the Agreement, a *cy pres* distribution will  
17 only occur if there are uncashed checks **and** "if a second distribution...is not feasible."  
18 Settlement Agreement ¶ 2.9, ECF No. 139-1. Thus, if there are a significant number of uncashed  
19 disbursement checks, the claims administrator will redistribute those funds to claimants on a *pro*  
20 *rata* basis, and the *cy pres* recipient will receive virtually nothing.

21 Accordingly, XPO respectfully requests that the Court issue its Final Approval Order  
22 finding that the parties' Settlement Agreement is fair, reasonable, and adequate. Both the current  
23 claim rates and the structure of the Agreement will ensure that the class claimants receive the  
24 lion's share of the settlement fund, while distributing a minimal (if any) portion of the fund to the  
25 selected *cy pres* beneficiary. To the extent the Court determines that the NCLC is not an  
26 appropriate beneficiary, another can be selected with the Court's guidance without disrupting the  
27 entire settlement.  
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Respectfully submitted,

/s/ Scott M. Voelz

Scott M. Voelz  
[svoelz@omm.com](mailto:svoelz@omm.com)  
Lupe R. Laguna  
[llaguna@omm.com](mailto:llaguna@omm.com)  
**O'MELVENY & MYERS LLP**  
400 South Hope Street  
Los Angeles, CA 90071  
Tel: (213) 430-6000

Randall W. Edwards  
[redwards@omm.com](mailto:redwards@omm.com)  
E. Clay Marquez  
[cmarquez@omm.com](mailto:cmarquez@omm.com)  
**O'MELVENY & MYERS LLP**  
Two Embarcadero Center, 28<sup>th</sup> Floor  
San Francisco, CA 94111  
Tel: (415) 984-8700

*Attorneys for Defendant XPO Logistics, Inc.*

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By: /s/ Scott M. Voelz  
*Attorney for Defendant  
XPO Logistics, Inc.*